

October 28, 2008

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2572

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U.S. DISTRICT COURT

In Regard to the Matter of:

Bayside State Prison

OPINION/REPORT

Litigation

OF THE

SPECIAL MASTER

RICHARD PETTIGREW

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

TUESDAY, OCTOBER 28, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

October 28, 2008

Page 2

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 2:30 PM.

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October 28, 2008

Page 3

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October 28, 2008

Page 4

1 JUDGE BISSELL: The next decision is
2 being issued in the matter brought by Richard
3 Pettigrew, docket number 08-2572.

4 Here an exhaustion question has also
5 been raised, but I find that it's unnecessary to
6 reach that because of Mr. Pettigrew's failure to
7 prove a substantive claim.

8 This opinion/report is being issued
9 pursuant to the directives of the Order of Reference
10 to a Special Master and the Special Master's
11 Agreement and the guiding principles of law which
12 underlie this decision to be applied to the facts
13 upon which it is based as set forth in the jury
14 instructions in the Walker and Mejias jury charges,
15 to the extent applicable to the allegations of Mr.
16 Pettigrew.

17 As finalized after review under Local
18 Civil Rule 52.1, this transcript will constitute the
19 written report required under paragraph seven of the
20 Order of Reference to a Special Master.

21 Mr. Pettigrew essentially gave
22 testimony that is, in essence, chronologically
23 impossible, and for that reason failed to sustain his
24 burden of proof even by the modest standard of a
25 preponderance of the credible evidence in this civil

October 28, 2008

Page 5

1 matter. Accordingly, the recommendation is that
2 judgment will be entered against him.

3 Mr. Pettigrew arrived at Bayside State
4 Prison, according to the records of his arrival, on
5 the 9th of October, 1997. This was more than a month
6 after the lockdown had been concluded and more than a
7 month after the SOG officers had left the premises.
8 Yet he proceeded to testify to certain events
9 supposedly leading up to his assaults that could only
10 have occurred if the SOG unit was there, and he was
11 quite insistent that they were there and that they
12 formed this gauntlet of people going to the gym. He
13 was going to the gym for an exercise period that was
14 allowed in the evening hours to residents of the
15 tents. They used the gym in the evenings because
16 they were not yet classified within the system and,
17 therefore, it was felt that they should be kept
18 separate from other inmates in terms of their
19 exercise in the gym.

20 So the events if they occurred at all
21 would have to have happened after his arrival, and
22 the fact that he might be going to the gym for
23 exercise is consistent with that time frame. But his
24 testimony about the SOG officers playing a role,
25 particularly as persons involved in a gauntlet or

October 28, 2008

Page 6

1 double line on the way to the gym is just not
2 possible.

3 Secondly, he testified that he was
4 assaulted by officers, he described them as Officers
5 Jones and Morrissey or Morrison. Actually, it would
6 appear there might have been an Officer Morris on
7 duty at the time. Mr. Pettigrew states that he was
8 assaulted outside the gym as a result of Sergeant
9 Royal's displeasure with him. Royal smashed him up
10 against the wall, and that led to a bloody nose and a
11 forehead injury. And then at that point the Officers
12 Morris and Jones, who had been the officers who
13 escorted the entire unit up to the gym, were
14 supposedly dispatched by Sergeant Royal to take this
15 single prisoner, Mr. Pettigrew, to the infirmary.
16 Officer Jones testified, and I find it to be the
17 case, that with the entire group that had gone to the
18 gym for an exercise period in their charge, and in
19 their charge only, under no circumstances would these
20 two officers have been dispatched by their sergeant
21 to handle a movement of this single prisoner from the
22 gym to the infirmary. Such actions could have left
23 the other inmates in the gym unsupervised. So once
24 again, the testimony of Mr. Pettigrew in this regard
25 is just not credible.

October 28, 2008

Page 7

1 I have no reason to feel one way or the
2 other that he was intentionally lying, but at the
3 very least, he is perhaps endeavoring to construct a
4 scene here that just doesn't hold water.

5 There was also testimony about a later
6 confrontation with Officers Morris and Jones, and
7 possibly somebody else who hit him with a, I believe
8 a flashlight outside his own tent area very shortly
9 after the alleged incident at the gym.

10 However, his testimony in
11 interrogatories (Exhibit D-393) and his testimony
12 here at this hearing were very different. The
13 interrogatory answers make no reference to the
14 incident at the gym at all, and furthermore provide a
15 different description of the so-called events in the
16 tent area. Some modest differences might be
17 expected, if you will, with the passage of time, but
18 nothing as significant as that.

19 So what we have here are, one, varying
20 descriptions by Mr. Pettigrew at various stages in
21 this litigation about what supposedly happened to
22 him. And, two, aspects of his testimony regarding
23 the events surrounding his alleged injuries which are
24 just inherently incredible: The presence of SOG
25 officers on the premises more than a month after they

October 28, 2008

Page 8

1 had left, and the supposed use of the two escorting
2 officers on this detail to leave the rest of the
3 prisoners and escort Mr. Pettigrew to the infirmary.
4 Neither of those events happened or could have
5 happened, and, in addition to the inconsistencies
6 about the other incident as to which he testified,
7 they cast serious doubt upon his credibility with
8 regard to all alleged events.

9 Finally, although not every item of
10 evidence has been discussed in this opinion/report,
11 all evidence presented to the Special Master was
12 reviewed and considered.

13 For the reasons set forth above, I
14 recommend in this report that the District Court
15 enter an order and judgment for no cause for action
16 with regard to Richard Pettigrew.

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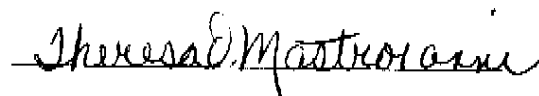
October 28, 2008

Page 9

C E R T I F I C A T E

I, Theresa O. Mastroianni, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Theresa O. Mastroianni, C.S.R.

Notary Public, State of New Jersey

My Commission Expires May 5, 2010

Certificate No. XI0857

Date: October 28, 2008

<p>A</p> <p>accurate 9:6 action 1:2 8:15 9:11,14 actions 6:22 addition 8:5 Agreement 4:11 al 1:10 allegations 4:15 alleged 7:9,23 8:8 allowed 5:14 answers 7:13 appear 6:6 applicable 4:15 applied 4:12 area 7:8,16 arrival 5:4,21 arrived 5:3 aspects 7:22 assaulted 6:4,8 assaults 5:9 attorney 9:10,12 ATTORNEYS 3:7,12,18 Audubon 2:24</p>	<p>certain 5:8 Certificate 9:21 Certified 2:6,22 9:4 certify 9:5,9 charge 6:18,19 charges 4:14 chronologically 4:22 circumstances 6:19 civil 1:2 4:18,25 claim 4:7 classified 5:16 commencing 2:10 Commission 9:20 concluded 5:6 confrontation 7:6 considered 8:12 consistent 5:23 constitute 4:18 construct 7:3 counsel 9:10,12 Court 1:1 2:7,9 2:22 8:14 credibility 8:7 credible 4:25 6:25 C.S.R 9:19</p>	<p>directives 4:9 discussed 8:10 dispatched 6:14 6:20 displeasure 6:9 District 1:1,1 2:9 8:14 docket 4:3 double 6:1 doubt 8:7 duty 6:7 D-393 7:11</p>	<p>facts 4:12 failed 4:23 failure 4:6 FAUVER 1:10 feel 7:1 felt 5:17 finalized 4:17 Finally 8:9 financially 9:13 find 4:5 6:16 flashlight 7:8 foregoing 9:5 forehead 6:11 FORMAROLI 2:21 formed 5:12 forth 4:13 8:13 9:8 frame 5:23 FURTHER 9:9 furthermore 7:14</p>	<p>hit 7:7 hold 7:4 HONORABLE 1:21 Horse 2:23 3:5 3:10 hours 5:14 House 2:9</p>
<p>B</p> <p>based 4:13 Bayside 1:6 5:3 believe 7:7 BISSELL 1:21 4:1 BLACK 3:5,10 BLACKWOOD 3:5,10 bloody 6:10 brought 4:2 burden 4:24</p>	<p>D</p> <p>D 3:9 date 9:8,21 decision 4:1,12 Defendants 1:11 3:18 described 6:4 description 7:15 descriptions 7:20 detail 8:2 differences 7:16 different 7:12,15</p>	<p>E</p> <p>E 3:2,2 9:1,1 employee 9:10 9:12 endeavoring 7:3 enter 8:15 entered 5:2 entire 6:13,17 escort 8:3 escorted 6:13 escorting 8:1 ESQUIRE 3:4,9 3:15,16 essence 4:22 essentially 4:21 et 1:10 evening 5:14 evenings 5:15 events 5:8,20 7:15,23 8:4,8 evidence 4:25 8:10,11 exercise 5:13,19 5:23 6:18 exhaustion 4:4 Exhibit 7:11 expected 7:17 Expires 9:20 extent 4:15</p>	<p>G</p> <p>gauntlet 5:12,25 Gerry 2:9 going 5:12,13,22 GRIEGEL 3:14 group 6:17 guiding 4:11 gym 5:12,13,15 5:19,22 6:1,8 6:13,18,22,23 7:9,14</p>	<p>I</p> <p>impossible 4:23 incident 7:9,14 8:6 inconsistencies 8:5 incredible 7:24 infirmary 6:15 6:22 8:3 inherently 7:24 injuries 7:23 injury 6:11 inmates 5:18 6:23 insistent 5:11 instructions 4:14 intentionally 7:2 interested 9:13 interrogatories 7:11 interrogatory 7:13 involved 5:25 issued 4:2,8 item 8:9</p>
<p>C</p> <p>C 3:2 9:1,1 Camden 2:10 case 6:17 cast 8:7 cause 8:15</p>		<p>F</p> <p>F 9:1 fact 5:22</p>	<p>H</p> <p>H 1:10 HAMILTON 3:17 handle 6:21 happened 5:21 7:21 8:4,5 hearing 7:12 hereinbefore 9:8 HIGHWAY 3:16</p>	<p>J</p> <p>JAIME 3:4 JAMES 3:16 Jersey 1:1 2:8,10 2:24 3:5,10,17 9:5,20 JOHN 1:21 Jones 6:5,12,16 7:6 JUDGE 4:1</p>

October 28, 2008

11

judgment 5:2 8:15 jury 4:13,14 K KAIGH 3:4 kept 5:17 L law 4:11 LAZZARO 3:16 leading 5:9 leave 8:2 led 6:10 left 5:7 6:22 8:1 license 2:7 line 6:1 litigation 1:6 7:21 Local 4:17 lockdown 5:6 lying 7:2 M MARK 3:15 Master 1:7,21 4:10,20 8:11 Master's 4:10 Mastroianni 2:6 2:21 9:3,19 matter 1:5 2:6 4:2 5:1 Mejias 4:14 modest 4:24 7:16 month 5:5,7 7:25 Morris 6:6,12 7:6 Morrisey 6:5 Morrison 6:5 movement 6:21 N N 3:2 ncither 8:4 9:9	9:11 New 1:1 2:8,10 2:24 3:5,10,17 9:4,20 NORTH 3:5,10 nose 6:10 Notary 2:8 9:3 9:20 number 2:7 4:3 O O 2:6 9:3,19 occurred 5:10 5:20 October 1:16 5:5 9:21 Officer 6:6,16 officers 5:7,24 6:4,4,11,12,20 7:6,25 8:2 once 6:23 opinion/report 1:6 4:8 8:10 order 4:9,20 8:15 outside 6:8 7:8 P P 3:2,2 paragraph 4:19 particularly 5:25 parties 9:11 passage 7:17 PC 3:14 people 5:12 period 5:13 6:18 persons 5:25 Pettigrew 1:8 4:3,16,21 5:3 6:7,15,24 7:20 8:3,16 Pettigrew's 4:6 Pike 2:23 3:5,10 place 9:8 PLAINTIFFS	3:7,12 playing 5:24 Plaza 2:9 PM 2:10 point 6:11 possible 6:2 possibly 7:7 premises 5:7 7:25 preponderance 4:25 presence 7:24 presented 8:11 principles 4:11 Prison 1:6 5:4 prisoner 6:15,21 prisoners 8:3 proceeded 5:8 proceedings 2:5 proof 4:24 prove 4:7 provide 7:14 Public 2:8 9:3,20 pursuant 4:9 Q question 4:4 quite 5:11 R R 3:2 9:1 raised 4:5 RAY 3:9 reach 4:6 reason 4:23 7:1 reasons 8:13 recommend 8:14 recommendati... 5:1 records 5:4 reference 4:9,20 7:13 regard 1:5 6:24 8:8,16 regarding 7:22	relative 9:10,12 report 4:19 8:14 Reporter 2:7 9:4 Reporting 2:22 required 4:19 residents 5:14 rest 8:2 result 6:8 review 4:17 reviewed 8:12 Richard 1:8 4:2 8:16 RODNEY 3:9 role 5:24 ROSELLI 3:14 3:15 Royal 6:9,14 Royal's 6:9 Rule 4:18 S S 3:2 scene 7:4 Secondly 6:3 separate 5:18 sergeant 6:8,14 6:20 serious 8:7 set 4:13 8:13 9:8 seven 4:19 Shorthand 9:4 shortly 7:8 significant 7:18 single 6:15,21 smashed 6:9 SOG 5:7,10,24 7:24 somebody 7:7 South 2:23 so-called 7:15 Special 1:7,21 4:10,10,20 8:11 SQUARE 3:17 stages 7:20 standard 4:24	State 1:6 2:8 3:16 5:3 9:4,20 states 1:1 2:9 6:7 stenographica... 9:7 substantive 4:7 supposed 8:1 supposedly 5:9 6:14 7:21 surrounding 7:23 sustain 4:23 system 5:16 T T 9:1,1 take 6:14 taken 2:6 9:7 tent 7:8,16 tents 5:15 terms 5:18 testified 6:3,16 8:6 testify 5:8 testimony 4:22 5:24 6:24 7:5 7:10,11,22 9:6 Theresa 2:6 9:3 9:19 time 5:23 6:7 7:17 9:7 transcript 2:5 4:18 9:6 true 9:6 TUESDAY 1:16 two 6:20 7:22 8:1 U underlie 4:12 unit 5:10 6:13 United 1:1 2:9 unnecessary 4:5 unsupervised 6:23 use 8:1
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October 28, 2008

12

V	6			
various 7:20	609-586-2257			
varying 7:19	3:17			
Videoconfere...				
2:22	8			
vs 1:9	856-232-3337			
	3:6,11			
W	856-232-4561			
W 1:21	3:6,11			
Walker 4:14	856-546-1100			
wall 6:10	2:25			
water 7:4				
way 6:1 7:1	9			
White 2:23	9th 5:5			
WILLIAM 1:10				
written 4:19				
X				
X10857 9:21				
0				
08-2572 1:2 4:3				
08012 3:5,10				
08102 2:10				
08106 2:24				
08690 3:17				
1				
1337 3:16				
1997 5:5				
2				
2:30 2:10				
2008 1:16 9:21				
2010 9:20				
251 2:23				
28 1:16 9:21				
3				
30X100085700				
2:7				
32 3:5,10				
33 3:16				
5				
5 9:20				
52.1 4:18				